

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

<b>DAVID HAAS and WILLIAM LEE</b>	)	
<b>GREGORY,</b>	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Case No. 00-CV-0928-CVE-SAJ</b>
<b>TULSA POLICE DEPARTMENT, <i>ex rel</i></b>	)	
<b>CITY OF TULSA, and OFFICERS, CROW,</b>	)	
<b>MIDDLETON, JONES, DERAMUS,</b>	)	
<b>KUNDSON and KRUSE,</b>	)	
	)	
<b>Defendants.</b>	)	

**OPINION AND ORDER**

Now before the Court are plaintiffs' Application for Leave to File (Dkt. # 138) and Motion to Amend (Dkt. # 139). Plaintiffs state that they have newly discovered evidence and, therefore, request leave to file a Fed. R. Civ. P. 60 motion for relief from this Court's April 4, 2003 Order (Dkt. # 115), in which the Court denied plaintiffs' Motion to Reconsider and Amend Judgement [sic] (Dkt. # 102). Although Rule 60 gives courts discretion to relieve a party from a final judgment, order, or proceeding for "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)," Fed. R. Civ. P. 60(b)(2), such relief is available for a finite period of time. Rule 60 states in pertinent part:

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

Fed. R. Civ. P. 60(b). Therefore, plaintiffs' request to file a motion pursuant to Fed. R. Civ. P. 60(b)(2) was due before April 5, 2004, and is untimely.

Plaintiffs seek to amend their Third Amended Complaint (Dkt. # 85), pursuant to Fed. R. Civ. P. 15, to add a claim of plaintiff William Lee Gregory's wrongful arrest. Dkt. # 139. Plaintiffs

submit for consideration a Brief in Support of Plaintiffs' Motion to Amend (Dkt. # 140). Plaintiffs' motion and brief fail to recognize that the Court has "read [] language from the plaintiffs' Third Amended Complaint as asserting a claim for the wrongful arrest of Gregory . . .," Dkt. # 94, at 17, n.3, and that the Court has dismissed Gregory's wrongful arrest claim with prejudice. Id. at 35. Accordingly, plaintiffs' request to include a claim for wrongful arrest is precluded.

**IT IS THEREFORE ORDERED** that plaintiffs' Application for Leave to File (Dkt. # 138) and plaintiffs' Motion to Amend (Dkt. # 139) are **denied**.

**The parties are directed to submit electronically through intake (not file) a final proposed pretrial order no later than February 1, 2006 at 9:30 a.m..**

**DATED** this 30th day of January, 2006.

  
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CLAIRES V. EAGAN, CHIEF JUDGE  
UNITED STATES DISTRICT COURT